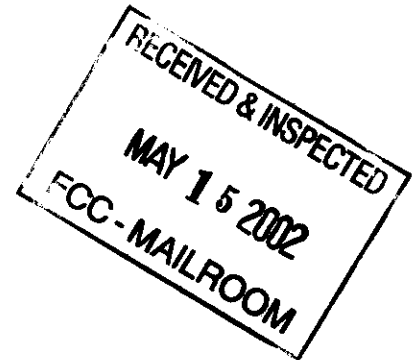


Before the Federal Communications Commission
Washington, D.C. 20554

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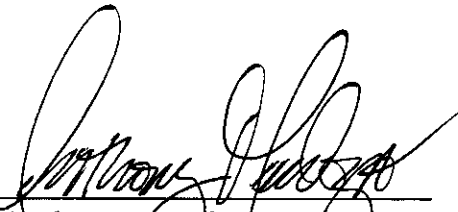
In the Matter of

Qwest Corporation Petition for Declaratory)
Ruling Concerning Wholesale DSL Services)
and Sections 251 (c)(4) of the Act)

WC Docket No. 02-77

Comments of the Minnesota Department of Commerce

Date: May 14, 2002



Anthony Mendoza
Minnesota Department of Commerce
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I. Background

On January 16, 2002, the Minnesota Public Utilities Commission (MN PUC) received a complaint filed on behalf of a group called "Minnesota ISPs Working Together" (Minnesota ISPs). This group was composed of several Internet Service Providers that had formed a consumer advocacy coalition¹. The complaint alleged that Qwest was forcing its DSL customers that subscribe to Qwest.net as their ISP to switch to Microsoft's MSN Internet Access without disclosing to customers that they were free to change to other providers, and in general, giving MSN preferential treatment over other ISP's. On January 24, 2002, the MN PUC issued a Notice of Complaint and Request for Response and Comments.

Concurrent with the formal complaint from ISPs, the Minnesota Department of Commerce (Department) received numerous complaints from angry Qwest ISP customers regarding the transfer from the Qwest.net ISP service to MSN's Internet service. Some of these complaints are described in an attached January 28, 2002 Star Tribune article. Some of the most frustrated customers were those who were switched to MSN Broadband without knowledge of other choices, but who later found that they could use an ISP other than MSN and asked Qwest to switch them, but found themselves captives of MSN. In several cases, MSN did not release the lines for weeks or months.

In response to the formal complaint, the Department provided the MN PUC with comments. In the course of reviewing jurisdictional issues involved in the complaint, the question arose as to whether the services provided by Qwest to MSN were being provided at retail and therefore subject to resale provisions under section 251(c)(4). Although the Department argued in its comments that the MN PUC could assert jurisdiction over the complaint on this basis, the PUC declined to do so.

Other parties, including the Minnesota Office of Attorney General, also participated in the case. In order to make a settlement possible, the parties agreed to separate the resale question and other policy issues from the rest of the complaint and to investigate them further in a separate docket. During the complaint process, the Department came to no conclusion regarding whether the arrangement between MSN and Qwest meant that Qwest was selling DSL at retail.

In its petition before the Federal Communications Commission (Commission), Qwest erroneously states that the "parties soon entered into a settlement agreement". A settlement was entered into by Qwest, MSN, and the Office of Attorney General of Minnesota, but for a number of reasons, the Department and the ISPs did not sign the agreement, although they supported the agreement as far as it went. Both the ISPs and

¹ The complaint lists the following internet service providers as members: Mainstream Solutions, Infinitivity, Sihope Communications, Webb Lake Software, VISI.com, Sound Choice Internet, Skypoint Internet, Backpack Software, Inc.

the Department continue to have several concerns regarding the business practices surrounding the marketing of Qwest's DSL service with MSN's Internet service.

In its initial effort to investigate the issue, the Department requested information from Qwest and MSN, including a copy of their agreement(s) but Qwest refused. Although Qwest and MSN refused to provide the Department with a copy of the contract, MSN eventually agreed to let the Department review the contract at the offices of MSN's legal counsel in Minneapolis, Minnesota. However, two days prior to the proposed review date, MSN insisted that the Department sign certain confidentiality agreements. The Department advised MSN that it was not necessary to sign these agreements because the Department is legally prevented from disclosing trade secret information, except as authorized by law. To date, the Department has been unable to view the document(s).

The Department is surprised that Qwest has elected to carry this issue to the Federal Communications Commission rather than simply providing it with the requested information so that the Department could conclude its investigation. More surprising is that Qwest failed to even serve a copy of this petition on the Department. The Department suggests that the Commission simply dismiss this petition and allow the Department to complete its investigation on this and a number of other issues raised during the complaint process.

In the alternative, the Department asks the Commission to consider the following:

II. The Commission Used the Ordinary Meaning of "At Retail" to Analyze the LEC/ISP Relationship

In its Second Report and Order in CC Docket No. 98-147, released November 9, 1999, the Commission addressed the issue of whether bulk DSL sales from ILECs to ISPs constituted resale under section 251 (c)(4) of the Telecommunications Act of 1996.² In its Order, the Commission concluded, "...such services do not fit within the type of transaction Congress intended to include under the discounted resale obligation in section 251 (c)(4)."³ However, the Commission made its determination based on the assumption that the ISP, not the ILEC, would be providing the retail functions of the service.

Given that no definition of "at retail" is included in the Telecommunications Act of 1996, the Commission arrived at this conclusion based in large part upon the ordinary definition of "at retail" as found in Webster's Unabridged Dictionary: "the sale of commodities, goods, articles, etc. individually or in small quantities or parcels directly to the consumer." The Commission also looked to Black's Law Dictionary that defined

² This order is commonly referred to as the "AOL Bulk Services Order" and the Department's comments will refer to it as such.

³ AOL Bulk Services Order at 17.

retail as: "retail transactions necessarily involve direct sales of a product or service to the ultimate consumer for her own personal use or consumption."⁴

In addition to considering the definition of "retail", the Commission examined whether the buyer used the purchased DSL service to create a combined product, such as an information service, to be sold to an ultimate end-user or instead consume the product itself. In its analysis of this latter criteria, the Commission assumed that, "In this process, the Internet Service Provider adds value to the bulk DSL telecommunications service by dividing that service for individual consumer use and adding the Internet service, thus enabling the Internet Service Provider to offer and sell the newly created information service to the ultimate consumer..."⁵

III. Qwest Is Intimately Involved in Retailing the Qwest/MSN DSL Product to Individual Customers

Contrary to the assumptions used by the Commission to determine that bulk DSL sales to ISPs do not amount to retailing, here, Qwest is directly participating in retail transactions to the ultimate consumer for his/her own personal use or consumption and Qwest is participating in the sale of commodities individually and in small quantities directly to the consumer.

Customers purchase Qwest's DSL service, whether it is sold as MSN Broadband or as a stand-alone service, at the same web site and from the same customer service personnel. In fact, when one goes to the Qwest web site, Qwest DSL packaged as MSN Broadband is listed along side Qwest's stand-alone DSL service. Customers who subscribe to a Qwest regulated service, Custom Choice, receive a waiver of the \$99 activation fee if they purchase Qwest's DSL service combined with MSN Broadband. (See attached web pages in MDOC Exhibit No. 2.)

While Qwest advertises and markets such promotions to customers, it categorizes the promotions as MSN. See MDOC Exhibit No. 3. The Department has not been able to determine how such promotions can solely be MSN's. For example, the Custom Choice promotion listed above clearly requires Qwest's consent and involvement, yet Qwest calls it an MSN promotion and thus not listed in any state or federal tariffs.⁶ Yet Custom Choice is a Qwest voice product.

In addition, Qwest advertises the Qwest/MSN product as if it were its own. Attached is a copy of an advertisement appearing in a Minneapolis newspaper. The title of the advertisement indicates that consumers can get "High Speed Internet From Qwest." The toll-free phone number provided is a Qwest phone number. Yet the product is actually the MSN product. MSN is mentioned in the lower-left hand corner of the ad,

⁴ Id at 13.

⁵ Id at 14.

⁶ Qwest labeled the promotion as Qwest's in its Dec. 2001 letter to the MN PUC.

along with the price. Qwest has already admitted that it also performs the billing and collection services in the MSN arrangement.

IV. Customers Report that Qwest Sold Them the Qwest/MSN DSL Product

The Department has also heard from customers regarding their experiences with Qwest and MSN. "In June/July 2001, representatives from QWEST were going door-to-door in our neighborhood offering free activation of DSL service and free modem use with purchase of MSN Broadband Service. When we purchased a computer with enough memory to handle the service, we I [sic] called a representative from QWEST and signed up for the service..." The letter explains that Qwest billed them for activation, despite the sales offer of free activation, and goes on to state, "I was told by MSN that they know nothing about free activation regarding my account..."⁷

"I ordered DSL and MSN on 11/14/01. At the time, the Qwest salesperson 'offered' one of two plans...one plan had one month of MSN DSL service free, the other 2 months free MSN DSL service (if I upgraded my residential telephone service to 'Custom Choice'); both plans waived the \$99.00 activation fee, allowed free use of the modem I needed, and required a one-year contract. Only after I inquired about other ISP's did the Qwest salesperson offer the DSL line...with my independent choice of ISP's (this would mean, however, that I would have to pay a \$69.00 activation fee and buy a modem from Qwest for \$295.00)." The e-mail complaint to the Department further explains that the Qwest salesperson assured the customer that the MSN service would meet certain technical needs of the customer, which the customer found out later was not the case.⁸

In total, the admissions by Qwest that it bills and collects for its packaged DSL product, the advertisements showing that Qwest brands the service as its own and performs the ordering functions, and consumers' own words demonstrate that Qwest handles most, if not all, retail functions in the Qwest/MSN arrangement.

V. Qwest's Marketing Practices are at Odds With its Tariff

As shown in the Commission Order, other large local exchange companies have not set up bulk DSL sales in the same manner as Qwest and MSN. As the Commission noted:

Pursuant to Bell Atlantic's tariff, the purchasing Internet Service Provider must provision all CPE and wiring to its end-users, provide customer service directly to the end-users, and assume sole responsibility for marketing, ordering, installation, maintenance, repair, billing and collections vis-à-vis the end-user subscriber.⁹

⁷ January 3, 2002 customer letter to the Department.

⁸ January 17, 2002 customer e-mail to the Department.

⁹ AOL Bulk Services Order at 15.

The Commission goes on to observe that according to the Bell Atlantic tariff, "Any Internet Service Provider that purchases a bulk DSL service **must itself, rather than the incumbent**, provide these typical retail services to the ultimate consumer. "(emphasis added)¹⁰

Qwest's FCC tariff has language similar to that of Bell Atlantic.

Obligations of customers who subscribe to QWEST DSL Volume Plans:

- Must purchase QWEST DSL HOST Service in all LATAs where the customer subscribes to Qwest DSL Service.
- Must submit orders to the Company electronically in a format and manner designated by the Company.
- Must provide customer premises equipment to its end users.
- Must deal directly with its end users and be solely liable with respect to all matters relating to the service, including marketing, ordering, technical support, billing and collections.
- Must communicate an end user's request to disconnect Qwest DSL Service to the Company within two business days of end user's notification to the customer purchasing under any Qwest DSL Volume Plan.

Although Qwest has a DSL tariff in effect, a number of non-public side agreements apparently modify how the tariff is implemented for MSN. Rather than MSN submitting orders to Qwest as called for in the tariff, Qwest is submitting orders to MSN. Rather than MSN dealing directly with customers for marketing, Qwest is providing advertising and waiving fees for regulated services in return for subscription to MSN Broadband. Rather than MSN sending bills to customers, Qwest is sending them. Rather than MSN collecting revenues from individual customers, Qwest is doing so.

VI. Qwest's Marketing Practices are at Odds with the Commission's AOL Bulk Services Order

In its AOL Bulk Services Order, the Commission envisions an ISP that buys DSL lines in bulk, combines the DSL lines with its internet service, and subdivides the service to sell it to individual customers, thus adding value to the bulk service. This is simply not the case with the Qwest/MSN arrangement. Under this arrangement, Qwest continues to

¹⁰ Id at 15.

contact individual customers, sell them a DSL service, albeit combined with MSN's Internet service, and subsequently bill customers and collect payments.

If the Commission allows Qwest to continue to provide retail functions to consumers for a service tariffed as "wholesale", the Commission would be allowing Qwest, or any other ILEC, to circumvent the entire tariff process. This sidestepping could not only affect the DSL service at issue here, but any tariffed service. The filed rate doctrine requires an ILEC or other provider to offer services in accordance with its tariff. That is not being done here if Qwest is allowed to claim it is not performing retail functions in a public document, but then is actually performing them pursuant to some other arrangement, the details of which are not public.

The Department supports the standards put forth in the AOL Bulk Services Order. In that order, the Commission determined that bulk DSL services sold to an ISP were wholesale because the ISP performed the traditionally retail functions--billing, marketing, and collections. The Department agrees that these functions are retail functions, and that if the ISP is performing them, the services provided by an ILEC are wholesale. In the Qwest/MSN arrangement, however, Qwest performs these retail functions. The fact that Qwest's tariff says it is not responsible for these functions does not change its actions. Allowing any provider, incumbent or otherwise, to promote form over substance in this manner frustrates the entire tariffing process and circumvents the standards in the AOL Bulk Services Order.

Because Qwest is providing the retail functions used by the Commission as the basis of its Order regarding what constitutes retail, the Commission should find that DSL services provided as part of MSN broadband are being provided at retail. The Department makes this recommendation not only because of the reasoning found in its AOL Bulk Services Order, but rather, because it is very difficult for a LEC to enter a marketing relationship with one ISP without strong incentives to discriminate against other ISPs.

VII. Qwest Discriminates against other ISPs in Favor of MSN

In its AOL Bulk Services Order, the Commission stated very clearly that LECs must continue to comply with their basic common carrier obligations with respect to these services. In its Order, the Commission included the following obligations:

providing such DSL services upon reasonable request; on just, reasonable, and nondiscriminatory terms; and in accordance with all applicable tariffing requirements.¹¹

¹¹ AOL Bulk Services Order at 21.

As shown above, there is serious doubt that Qwest has provided these services in accordance with its tariff. In addition, there is serious doubt that Qwest has provided these services on just, reasonable, and non-discriminatory terms. In his affidavit, Qwest Vice President Steven K. Starliper, admits that, "Qwest receives a commission for each MSN Broadband customer it obtains for MSN."

The complaint brought by Minnesota ISPs before the Minnesota PUC originated because Qwest was allegedly providing its retail customers with limited information regarding their choices of selecting an ISP for their Qwest DSL service. After receiving this limited information, customers found they could not leave MSN without paying a switching fee, purchasing a new modem for \$295, and experiencing service outages for a number of days or weeks. Angry Qwest customers complained to the Minnesota Public Utilities Commission because they were not given clear choices regarding their selection of an ISP.

As shown on its web page in Exhibit No. 2, Qwest clearly discriminates in favor of MSN over other ISPs. MSN, Independent ISPs and other volume ISPs are all customers of Qwest, but only MSN is prominently shown on the initial web page that lists Qwest DSL services. Customers must advance to another web page in order to view other choices of ISPs. Signup fees are waived for MSN customers in return for purchasing regulated Qwest services. Customers who purchase DSL with independent ISPs and other bulk ISPs do not receive this fee waiver. With a commission structure in place, Qwest is not only incited to discriminate against ISPs in favor of MSN, the design of its web page and financial incentives provide clear evidence that it is doing so.

The Department wishes to emphasize that MSN is not Qwest's only Volume ISP. Qwest has represented to the Department and the MN PUC that it does business with three Volume ISPs. The Department is not concerned with Qwest's arrangements with Qwest's two other Volume ISPs. Qwest's federal tariff setting out its requirements for Volume ISPs applies to all three Volume ISPs. However, MSN is the only Volume ISP that Qwest actively advertises on its website. The Department is not aware of any advertising Qwest has performed on behalf of the other two Volume ISPs. In addition, the Department has not received any complaints from customers of the other Volume ISPs. The fact that MSN, allegedly a Volume ISP, is treated differently from Qwest's other Volume ISPs is further proof that Qwest has discriminated in favor of MSN and to the detriment of other ISPs. If all three volume ISPs were in fact purchasing services out of the same tariff, MSN would not be treated any differently than the other Volume ISPs.

VIII. Recommendation

The Commission should find that although Qwest purportedly sells its DSL services to MSN on a bulk basis, it is in fact selling its DSL services at retail. Further, Qwest may not be providing its DSL services on just, reasonable, and non-discriminatory terms.

The Qwest/MSN agreement incents Qwest to provide discriminatory treatment in favor of MSN at the expense of competing ISPs. For these reasons, the Commission should require disclosure of its agreements and investigate Qwest's relationship with MSN. At a minimum, the Commission should require disclosure of its agreements to the Department so that its investigation may proceed.

/jd

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Qwest and Microsoft fumble handoff of DSL customers

Steve Alexander
Star Tribune

Published Jan 28 2002

Tens of thousands of Minnesotans use DSL (digital subscriber line) high-speed Internet access, but a lot of them aren't happy.

Many angry DSL customers of telephone company Qwest and software giant Microsoft claim they've been victimized by delays in getting DSL, by billing errors, or by not being able to get phone lines when they tried to quit the service.

Many of these customers said they signed up with Microsoft's MSN only because Qwest never told them they had any other choice.

Last September, Qwest announced that its roughly 60,000 Minnesota consumer DSL customers who use the Windows operating system would be shifted to MSN, a Microsoft Internet access service that ranks No. 2 to America Online.

In e-mails and conventional mailings to customers, Qwest did not tell customers they could transfer to other service providers besides MSN. Qwest officials said that was because they thought of MSN as the best consumer choice. And Qwest declined to say whether it gets paid by MSN for every Qwest DSL customer who becomes an MSN customer.

Earlier this month, the state Commerce Department said it would investigate whether tens of thousands of Minnesotans have been treated fairly in the switch from Qwest DSL to MSN.

But some DSL customers say they don't need an investigation to tell them that they've been badly treated by Qwest and Microsoft's MSN service.

Jerry Welters, a retired Minneapolis police officer, said Qwest and MSN never delivered on promises to set up his DSL service, which he wanted so he could talk on the phone and access the Internet at the same time at his Minneapolis home.

He said Qwest and MSN made it difficult for him to leave the MSN service by retaining control over his telephone line so he couldn't sign up

with a competing local DSL service provider, Goldengate Internet Services.

Welters had been a Qwest customer for years, using low-speed dial-up Internet service through an internal computer modem. But in November, he got an e-mail from Qwest that said it was switching its Internet customers to MSN. The e-mail did not say that customers had the option of leaving Qwest for a competing Internet provider if they didn't want to make the switch to MSN.

"I figured at that point that I had no choice but to go with the flow. So I decided to sign up for DSL with MSN," Welters said.

But while Welters was told by Qwest that the DSL service would be operational by mid-December, MSN failed to ship the modem and software needed to use the DSL service. He called MSN several times, and each time was promised that the modem and software would be shipped.

"They lied to me about when the modem and software package would be shipped," Welters said. "Frustration is not the word for it."

Lisa Gurry, MSN's product manager, said delays in getting connected to MSN's DSL service were related to synchronization of databases and training of customer support representatives, problems that are being remedied. "Customers should now have their MSN broadband up and running within 15 to 20 days of placing their orders, which is similar to the industry average."

When the MSN modem and software hadn't arrived by Jan. 11, Welters called MSN and canceled his DSL service. But then he discovered that quitting MSN wasn't that easy.

When Welters called Goldengate Internet Services in Fridley in response to an advertisement for DSL service, he was told the service couldn't be started until MSN and Qwest relinquished control of his telephone line, a process that Qwest told him could take weeks.

"That's preposterous," Welters said.

Keeping the lines

Brian Elijah, a Bloomington chiropractor who used DSL in his office, also had trouble leaving MSN. He agreed to have his Qwest DSL service shifted to MSN in December, but then was furious over what he said were two daylong DSL service outages.

After six days, Elijah canceled MSN's DSL service but discovered that MSN would not relinquish control of his telephone line for a month and that it would take an additional 10 to 14 days for Qwest to prepare the

line so he could seek another DSL provider. After two weeks without an Internet connection, he resumed using a dial-up Internet connection at his office but said it interferes with his business by tying up his telephone line, a problem that DSL had solved.

"They make it hard to leave MSN," Elijah said. "I left messages for Qwest and MSN to call me back, but they never do. The people either are very incompetent or they don't know how to do what they're doing."

Steve Starliper, Qwest vice president of product management for DSL, confirmed that some customers had experienced long delays being disconnected from MSN but said "that is far from the norm." It should require 10 to 12 days from the time a customer quits MSN until he or she can be connected to a competing Internet service provider, he said.

Joe Kaju of Minneapolis had a different experience with the DSL switchover -- billing errors. He already was a Qwest DSL customer but hadn't chosen to be transferred to MSN.

But Qwest shifted Kaju's DSL account to MSN anyway, and then both Qwest and MSN began billing him for the service, each charging the full \$47.90 a month. Because Kaju used automatic payment from his checking account, the bill was paid before he noticed the excessive charges.

Despite calls to Qwest and MSN, the double-billing continued for about three months. Both companies promised refunds that never appeared, Kaju said.

In frustration, Kaju dropped the DSL service on Dec. 26 but discovered that MSN continued to bill him for another half-month of service. He also sent an e-mail to Qwest headquarters in which he called the situation a "scam," bad enough to make him want to drop phone service from Qwest.

And he did. Today Kaju has switched his Internet access from telephone-based DSL to a cable TV-based modem and has dropped his home Qwest telephone service in favor of a cell phone.

Needs customer support

Mike Day of Bloomington also had billing problems after signing up for DSL service from MSN. Although he was supposed to get free installation and two months' free service, he continues to be billed for both. Despite MSN promises that the charges will be removed, he now has been overcharged for two months.

"MSN lacks the customer support they need," Day said.

David Olsen of Brooklyn Center said Qwest is threatening to turn over

his name to a collection agency because he hasn't paid his DSL bill -- but Olsen has never been a Qwest Internet access customer. Olsen, an instructor at North Hennepin Community College, said he inquired about Qwest DSL in August but didn't sign up for it. Nonetheless, Qwest sent him a modem for DSL service and has been billing him for its use ever since. What began as a \$16-a-month charge has grown to \$163.70.

"Now they're taking me to a collections agency for it," he said. "My mistake was asking about DSL."

Qwest, which handles the billing for the MSN service, admits to having had some problems with billing, but those have not affected thousands of customers and they have been corrected, Qwest's Starliper said.

"Most of the issues [with the shift of Qwest customers to MSN] have to do with making the MSN databases speak with the Qwest databases," Starliper said. "Where there has been double-billing, we have made sure it was corrected. And we have delayed our original date for migrating Qwest customers to MSN from mid-January until the end of March or early April."

MSN's Gurry said double-billing has occurred in some cases because new accounts were erroneously created when customers called to check on the status of their orders for MSN DSL service. She said MSN would refund any overcharges and is working with Qwest to avoid setting up duplicate customer accounts. She said MSN customers with problems should call MSN customer support at 1-800-826-3110.

-- *Steve Alexander is at alex@startribune.com.*

Are you being switched to *msn*, against your will?

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Qwest DSL 256	256K/Up to 256K	Use for fast web surfing, e-mail and downloading moderate-size files.	\$21.9 not ir
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Qwest DSL Deluxe	Up to 640K/Up to 256K	Use for online gaming, e-mailing large attachments or downloading large files.	\$31.9 not ir
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Qwest DSL Pro 640	640K/Up to 640K	Recommended for home offices, telecommuters and small businesses.	\$66.0 not ir
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MINN. PUBLIC UTILITIES COMMISSION

Qwest
200 South 5th Street, Suite 390
Minneapolis, MN 55402
Phone 612-663-5989
FAX 612-663-8331

JoAnn Hanson
Director, Regulatory

ride the light

Qwest

December 21, 2001

Mr. Mark Oberlander
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Dear Mr. Oberlander:

This responds to your letter requesting information about MSN.

Historically, Qwest has offered its Qwest DSL Service (f/k/a MegaBit Services) directly to end users pursuant to Section 8.4.1 of FCC Tariff No. 1.¹ When a customer orders Qwest DSL, the end user must select an ISP from a list of qualified ISPs for connectivity to the Internet and content. See list of qualified ISPs from the Qwest.com website, http://orderdsl.qwest.com/isp_avail/welcome.asp.

The other Regional Bell Operating Companies, however, did not market their DSL product to retail end users. Rather, they sold the DSL service to ISPs at a volume discount. Because this is deemed a "wholesale" offering, the FCC has determined that no additional discount is applicable to this tariff offering when purchased by a CLEC. The ISPs, in turn, bundle the DSL service with their Internet connection/content product, and sell the entire bundle to the end user. The ISP is the RBOC's DSL customer of record. The end user is the ISP's customer of record and the end user looks to the ISP for all questions and issues relating to the bundled DSL offering, including, e.g., billing and service.

In the past year, Qwest amended its FCC tariff to add Qwest DSL Volume Plans whereby an ISP may purchase DSL from Qwest at prescribed discounts depending on the volume of DSL lines to which it has committed. When an ISP, CLEC or other large volume buyer, e.g., a corporation, purchases out of the Volume Plan section of the tariff (Section 8.4.4), the volume purchaser is Qwest's DSL customer of record. Accordingly, Qwest deals with the volume purchaser, e.g., ISP,

¹ When Qwest initially launched its DSL service, it filed tariffs with the State PUCs. Following an FCC determination that Internet access is an interstate service, the Company filed its DSL tariff with the FCC. 100 percent of its DSL sales are made out of the FCC tariff.

for all aspects of the DSL service including, e.g., provisioning and disconnection, and not with the ultimate end user who has purchased the bundled DSL and content package from the ISP.

MSN has opted to purchase DSL service pursuant to the terms of Qwest's Volume Plan in the FCC tariff. MSN bundles the DSL and Internet access/content and markets that service to end users under the trade name, "MSN Broadband." When a customer purchases MSN Broadband from MSN or Qwest, as MSN's agent, or migrates to MSN Broadband as described in answer 10(d) below, the end user looks to MSN and not Qwest for resolution of any types of service issues.

There are several tariff charges associated with DSL. First, there is a non-recurring charge of \$69.00 associated with turning-up the DSL service. This includes, connecting the users telephone line with the DSLAM, generally located in the central office, as well as directing the virtual circuit to the ISP chosen by the customer. There is also an installation charge of \$149.95 if the customer opts to have Qwest install the DSL modem (CPE).

1. Which Company is providing DSL service to the public under the MSN/Q agreement?

Response: MSN. As noted above, whenever a customer purchases MSN Broadband, it does so directly from MSN. MSN, in turn, is Qwest Corporation's customer of record for DSL. An end user may, however, purchase Qwest DSL directly from Qwest and select an ISP which does not purchase DSL out of the Volume ISP plan. In the latter case, the end user is Qwest's DSL customer of record and the end user also has a separate contractual relationship with the selected ISP.

2. Is MSN reselling Qwest's DSL service?

Response: MSN purchases Qwest DSL from Qwest Corporation service out of the Volume Plan portion of the FCC tariff, Section 8.4.4. MSN, in turn, bundles the DSL with Internet access and content and brands that bundled, retail offering as "MSN Broadband."

3. How are customers billed for MSN/Q services?

Response: MSN and Qwest Corporation have entered into a billing and collection agreement whereby Qwest is the billing agent for MSN. The end user is billed by MSN for MSN Broadband on the unregulated page(s) of the customer's Qwest telephone bill.

4. Are these MSN or Qwest charges?

Response: The charges for MSN Broadband are solely charges assessed the end user by MSN.

5. How is Qwest compensated for the use of its DSL facilities under the MSN/Q arrangement?

Response: Qwest bills MSN monthly for DSL services MSN purchases out of the Volume Plan portion of Qwest's FCC tariff. Any other large user who commits to the volume levels set forth in the tariff may also purchase out of the Volume Plan in Section 8.4.4 of the tariff.

6. It appears MSN/Q customer service is handled by MSN, not by Qwest. What type of information will Qwest maintain or have access to regarding these accounts?

Response: MSN handles most Tier I and Tier II support for MSN Broadband customers. MSN owns the confidential information of its customers. Qwest has access to certain information regarding MSN's customers for the limited purposes of disconnecting terminated Qwest.net accounts, e-mail forwarding to new MSN accounts, account creation for new MSN accounts, billing and collections and responding to inquiries from former Qwest.net customers who elected to migrate to the MSN ISP service regarding non-ISP related services provided before such migration.

7. Which company is responsible for resolving customer complaints and trouble reports regarding the DSL portion of the MSN/Q services.

Response: The customer purchases MSN Broadband directly from MSN. Accordingly, MSN is responsible for resolving all customer issues relating to that service including, e.g., billing and service.

8. If a MSN/Q customer files a PUC complaint regarding DSL service, which company will be responsible for responding to the PUC?

Response: DSL is an FCC service. Accordingly, the appropriate venue for a complaint associated with DSL service would be before the FCC. Complaints regarding DSL service provided by MSN would be appropriately directed to MSN. Despite these general parameters, if an end user files a PUC complaint, the appropriate respondent to that complaint will depend on the specific allegations, and whether the complaint relates exclusively to DSL or Internet content services provided by MSN.

9. Qwest's website advertises a free modem and a free month's service for customers signing up for MSN/Q. Has Qwest made a filing with the PUC regarding this promotion?

Response: MSN currently offers the following promotions to purchasers of MSN Broadband: "Purchase MSN Broadband Powered by Qwest 256 or Deluxe and get FREE activation, FREE use of a DSL modem, and 30 days of FREE service. CustomChoice customers will receive 60 days of FREE service!*" As an ISP, MSN is not required to file its promotions with the FCC.

Qwest's promotion to retail purchasers of Qwest DSL is: "Order Qwest DSL 256 or Deluxe and get a FREE internal modem or an external modem for only \$95! Order Qwest DSL Pro (any version) and get a FREE internal modem plus a \$100 rebate after 45 days of service." Qwest files all its promotional offers with the FCC in accordance with its rules.

10. What is the process for customers to convert from MSN/Q to Qwest DSL with another Internet Service Provider of their choice (or vice versa)? Is there an interruption in service? If yes, how long? Is there a service charge?

Response: The answer depends on the circumstances, as set forth below:

a. Customer buys Qwest DSL from Qwest directly and purchases Internet connectivity from an authorized ISP that is NOT purchasing DSL service out of the Volume Plan in the tariff. Customer wants to change to another authorized ISP. In this case, the Qwest DSL customer notifies Qwest that it wishes to change ISPs. It generally takes 5 days to "redirect" the customer's virtual channel from one ISP to another ISP. There is no interruption to the DSL service (although there may be some service disruption associated with changes in ISPs). The end user is charged \$30 pursuant to the tariff for redirecting the virtual channel from one ISP to another.

b. Customer purchases MSN Broadband from MSN or Qwest and wishes to purchase Qwest DSL from Qwest and ISP Internet connectivity/content from an ISP that is not purchasing DSL out of the Volume Plan. In this case, the customer must ask MSN to disconnect MSN Broadband because the customer has opted to purchase that bundled service offering from MSN. MSN, in turn, notifies Qwest to disconnect the DSL service in question that MSN purchases out of the Volume ISP Plan. Once the MSN Broadband service is disconnected, the customer may place a new order for Qwest DSL either with Qwest (through the retail sales channel or website) or via the ISP it has selected. There is a 10 day interval between the date service is ordered and activated. During this period, Qwest makes the connections in the central office, notifies the ISP of the virtual circuit address and mails a DSL modem

December 21, 2001

to the end user. Qwest charges the end user a non-recurring charge of \$69.00 for service activation (unless there is a promotion waiving such tariff charge). If the customer wants Qwest to install the DSL modem (CPE), there will be an additional charge of \$149.95. It should be noted that the process described above is identical whenever the end user elects to purchase a bundled DSL and Internet connection/content package from an ISP purchasing DSL under the Qwest DSL Volume Plan.

c. Customer purchases Qwest DSL from Qwest and purchases Internet access/content from an authorized ISP and wishes to have MSN as its ISP. Customer must cancel its Qwest DSL service. Once that service is disconnected, the customer may order MSN Broadband directly from MSN or one of its authorized sales agents, including certain Qwest personnel. MSN Broadband will be installed within 10 days. Qwest will bill MSN \$69.00 for the NRC as well as the appropriate recurring monthly rate. MSN determines what rates it bills the end user for the bundled offering of DSL and Internet connectivity and content. MSN will also provide the DSL modem to the end user.

d. A Qwest DSL customer with Qwest.net as its ISP for Internet connectivity /content seeks to migrate to another ISP. Qwest.net, an unregulated ISP, has decided to exit the consumer retail market for Internet connection. Since August 2001, Qwest.net has advised its consumer Internet customers to select an alternate ISP. Qwest.net has advised its customers that their Internet access through Qwest.net will be unavailable after January 21, 2002. Qwest.net customers may establish MSN Internet Access Service or they may terminate their Qwest.net service and establish their service with another ISP. In either event, Qwest is waiving the ISP change charge of \$30.00 during this period. Customers who select MSN are advised that once the change to MSN is made, they will be a customer of MSN for MSN Broadband or MSN Internet Access as applicable.

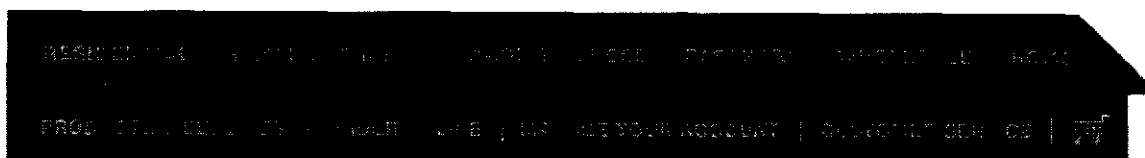
Please contact me if I may be of additional assistance.

Sincerely,



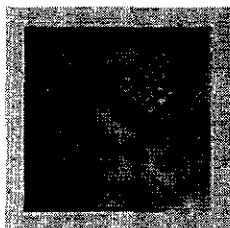
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Director, Regulatory

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If you order CustomChoice, you may qualify for a discount on MSN Broadband Powered by Qwest. Check with a Qwest representative to see if you qualify.

Price comparison to individually priced services. Offer valid for residential customers only. Price does not include other charges such as CALC, zone increment, EAS, USF or taxes. Caller ID, Call Waiting ID and Caller ID with Privacy + require compatible display equipment or a

compatible phone such as the Home Receptionist®. The display unit shows the listed name and number for the phone line your caller is using. Not all numbers and/or names will be displayed, logged or spoken, if you have Talking Call Waiting, Selective Call Forwarding and Priority Call may not operate on blocked and certain other calls. The same special ring is used for Custom Ringing, Priority Call and Long Distance Alert. If you have these services, you may not be able to distinguish between calls. Other limitations and restrictions apply. Some services not available in all areas. Price subject to change without notice. Ask your Qwest Service Representative for details. Charges for installation of second line, inside wiring and additional jacks may apply. ©2002 Qwest Communications International Inc.

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Service not available in all areas. Program is only available to new MSN Broadband subscribers that are not currently enrolled in a one-time MSN Internet Access program which has a time commitment. If for any reason your subscription is terminated after activation and before you have paid for twelve (12) months of Broadband service, then you will be charged a termination fee of \$150. Special equipment may be required. Actual speeds over DSL lines will vary depending on several factors including location of your home, computer performance and configuration, network or Internet congestion, Web site accessed and current phone line conditions. Speed of service, unlimited and error free service are not guaranteed. Some customers may require professional installation which may be obtained for an extra charge. You must additionally agree to the Subscriber Agreement to access the service. A valid major credit card may be required. If for any reason your subscription is terminated before you have paid for 24 months of Broadband service, then you will be required to return the DSL modem provided to you. If you do not return the modem, you will be charged \$150 plus applicable taxes. The then-current price for the unlimited MSN Broadband Internet Access Plan will be automatically charged to you beginning the month following your trial period, if any, and thereafter until you cancel your account or select an alternative plan. You must be 18 years old or older. MSN Broadband Internet Access is available only to users of the Windows 95 or later operating systems. MSN Internet Access is available only for personal non-commercial use. Offer expires January 31, 2002. Offer requires one-year contract and is subject to non-refundable activation fee, waiver of 2 month service charge for Qwest CustomChoice subscribers (all other new MSN Broadband customers receive 1 month waiver), and included cost of optional DSL modem (not included).